

struck out subsec. (i) designation and heading which read as follows: “Cooperative Research and Development Agreements Under Stevenson-Wylder Technology Innovation Act of 1980”. See Codification note above.

§ 2372. Independent research and development and bid and proposal costs: payments to contractors

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed pursuant to subsection (a) shall provide that independent research and development and bid and proposal costs shall be allowable as indirect expenses on covered contracts to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) ADDITIONAL CONTROLS.—Subject to subsection (f), the regulations prescribed pursuant to subsection (a) may include the following provisions:

(1) A limitation on the allowability of independent research and development and bid and proposal costs to work which the Secretary of Defense determines is of potential interest to the Department of Defense.

(2) For each of fiscal years 1993 through 1995, a limitation in the case of major contractors that the total amount of the independent research and development and bid and proposal costs that are allowable as expenses of the contractor's covered segments may not exceed the contractor's adjusted maximum reimbursement amount.

(3) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected Department of Defense future needs; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor's independent research and development programs.

(d) ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—For purposes of subsection (c)(2), the adjusted maximum reimbursement amount for a major contractor for a fiscal year is the sum of—

(1) the total amount of the allowable independent research and development and bid and proposal costs incurred by the contractor during the preceding fiscal year;

(2) 5 percent of the amount referred to in paragraph (1); and

(3) if the projected total amount of the independent research and development and bid and proposal costs incurred by the contractor for such fiscal year is greater than the total amount of the independent research and development and bid and proposal costs incurred by the contractor for the preceding fiscal year, the amount that is determined by multiplying

the amount referred to in paragraph (1) by the lesser of—

(A) the percentage by which the projected total amount of such incurred costs for such fiscal year exceeds the total amount of the incurred costs of the contractor for the preceding fiscal year; or

(B) the estimated percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed.

(e) WAIVER OF ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—The Secretary of Defense may waive the applicability of any limitation prescribed under subsection (c)(2) to any contractor for a fiscal year to the extent that the Secretary determines that allowing the contractor to exceed the contractor's adjusted maximum reimbursement amount for such year—

(1) is necessary to reimburse such contractor at least to the extent that would have been allowed under regulations as in effect on December 4, 1991; or

(2) is otherwise in the best interest of the Government.

(f) LIMITATIONS ON REGULATIONS.—Regulations prescribed pursuant to subsection (c) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

(g) ENCOURAGEMENT OF CERTAIN CONTRACTOR ACTIVITIES.—The regulations under subsection (a) shall encourage contractors to engage in research and development activities of potential interest to the Department of Defense, including activities intended to accomplish any of the following:

(1) Enabling superior performance of future United States weapon systems and components.

(2) Reducing acquisition costs and life-cycle costs of military systems.

(3) Strengthening the defense industrial base and the technology base of the United States.

(4) Enhancing the industrial competitiveness of the United States.

(5) Promoting the development of technologies identified as critical under section 2506 of this title.

(6) Increasing the development and promotion of efficient and effective applications of dual-use technologies.

(7) Providing efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(h) MAJOR CONTRACTORS.—A contractor shall be considered to be a major contractor for the purposes of subsection (c) for any fiscal year if for the preceding fiscal year the contractor's covered segments allocated to Department of Defense contracts a total of more than \$10,000,000 in independent research and development and bid and proposal costs.

(i) DEFINITIONS.—In this section:

(1) COVERED CONTRACT.—The term “covered contract” has the meaning given that term in section 2324(l) of this title.

(2) COVERED SEGMENT.—The term “covered segment”, with respect to a contractor, means a product division of the contractor that allocated more than \$1,000,000 in independent research and development and bid and proposal costs to Department of Defense contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, such term means the contractor as a whole.

(Added Pub. L. 101-510, div. A, title VIII, §824(a)(1), Nov. 5, 1990, 104 Stat. 1603; amended Pub. L. 102-25, title VII, §701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102-190, div. A, title VIII, §802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102-484, div. A, title X, §1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103-35, title II, §201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104-106, div. D, title XLIII, §4321(b)(11), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Subsec. (i)(1). Pub. L. 104-106 substituted “2324(l)” for “2324(m)”.

1993—Subsec. (g)(5). Pub. L. 103-35 substituted “section 2506” for “section 2522”.

1992—Subsec. (e)(1). Pub. L. 102-484 substituted “on December 4, 1991” for “on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993”.

1991—Pub. L. 102-190 substituted section catchline for one which read “Independent research and development” and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102-25 substituted “subsection (b), including” for “subsection (b) or”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 802(e) of Pub. L. 102-190 provided that: “The amendments made by this section [amending this section and section 2330 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.”

REGULATIONS

Section 802(b) of Pub. L. 102-190 provided that: “The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.”

STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT

Section 802(c) of Pub. L. 102-190 directed Director of the Office of Technology Assessment to conduct a study to determine effect of regulations prescribed under this section on the achievement of policy stated in subsec. (g) of this section and submit a report containing results of such study to Committees on Armed Services of Senate and House of Representatives not

later than Dec. 1, 1995, prior to repeal by Pub. L. 103-160, div. A, title II, §266, Nov. 30, 1993, 107 Stat. 1611.

§ 2373. Procurement for experimental purposes

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) PROCEDURES.—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantity.

(Added Pub. L. 103-160, div. A, title VIII, §822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103-337, div. A, title X, §1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-106, div. A, title VIII, §812, Feb. 10, 1996, 110 Stat. 395.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103-160, §822(c)(2).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 inserted “only” after “applies” in second sentence.

1994—Subsec. (a). Pub. L. 103-337 substituted “chemical activity, and aeronautical supplies,” for “and chemical activity supplies,”.

§ 2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103-355, title VII, §7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)